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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,804	07/17/2003	Nicholas A. Restifo	4111-030950	1460

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EXAMINER

KING, ANITA M

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 11/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/621,804

Applicant(s)

RESTIFO, NICHOLAS A.

Examiner

Anita M. King

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-12,14-19 and 21-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,5-12,14,16-19 and 21-23 is/are rejected.
- 7) ☒ Claim(s) 4 and 15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

This is the second office action for application number 10/621,804, Portable Containment Unit, filed on July 17, 2003.

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the one or more horseshoes must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement-drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Cancellation of Claims***

Claims 2, 13, and 20 have been canceled.

***Claim Objections***

Claim 4 is objected to because of the following informalities: in claim 4 line 3, "horsehoes" should be changed to --horseshoes--. Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3, 5, 6, 14, 16, 19, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent D163,617 to Lilja in view of U.S. Patent 5,915,561 to Lorenzana et al., hereinafter, Lorenzana. Lilja discloses a portable containment unit, comprising: a cross member; at least one support member attached to and extending away from the cross member and configured to support the cross member above a ground surface; wherein the cross member further defines at least one receptacle orifice configured to receive at least one object therein; wherein the cross member is elongated; wherein the at least one support member further comprises a positioning element configured to removably position the cross member in a substantially parallel position with respect to the ground surface; and wherein the positioning element comprises a sharpened tip portion positioned on a distal end of the support member and configured to allow at least a portion of the support member to penetrate the ground

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surface, thereby securely positioning the cross member with respect to the ground surface.

Lilja discloses the claimed invention except for the limitations of the cross member having recessed portions and wherein the cross member and the support member are made of wood or plastic. Lorenzana teaches a portable containment unit (11) made up of plastic and comprising a cross member (13) having recessed portions defined on opposite sides of the cross member forming tapered ends on the cross member, and at least one receptacle orifice (25, 33, 35, 37, & 59). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the cross member in Lilja to have included the cross member as taught by Lorenzana for the purpose of providing an alternative, aesthetically different appearance to the cross member.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lilja combined with Lorenzana and in further view of U.S. Patent 4,497,077 to Provost. Lilja combined with Lorenzana discloses the claimed invention except for the positioning element having a plate member. Provost teaches a portable containment unit having at least one receptacle and a support member (12, 14) having a positioning element, wherein the positioning element includes a plate member (16) positioned on a distal end of the support member and configured to balance the unit above the plate member. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the unit in Lilja combined with Lorenzana to have included the positioning element as taught by Provost for the purpose of providing a means for

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alternatively supporting the unit on a ground surface to provide a wobble-free support when the unit is supported on a flat surface such as a floor.

Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lilja combined with Lorenzana and in further view of U.S. Patent D464,499 to Gharst. Lilja combined with Lorenzana disclose the claimed invention except for the limitation of two support members attached to the cross member. Gharst teaches a stand having a cross member including a receptacle and having two support members attached to and extending away from opposite ends of the cross member, wherein each support member includes a positioning element configured to removably position the cross member in a substantially parallel position with respect to the ground surface, and wherein the positioning elements each comprise a tip portion positioned on a distal end of each of the support members. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the unit in Lilja combined with Lorenzana to have included two support members as taught by Gharst for the purpose of providing a more stable means of supporting the unit in relation to the ground surface. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the tip portions in Gharst to have been sharpened for the purpose of providing a more efficient means of penetrating the ground surface.

Claims 11, 12, 17, 18, 22, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lilja combined with Lorenzana and in further view of U.S. Patent 4,854,468 to Dahlquist, II et al., hereinafter, Dahlquist. Lilja combined with Lorenzana

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disclose the claimed invention except for the limitation of a receptacle configured to slide within the receptacle orifice. Dahlquist teaches a receptacle device for insertion into a oversized receptacle orifice (23) of a wall structure (24), the receptacle including a ridge portion (30), the ridge portion configured to rest upon an upper edge of the receptacle orifice, thereby removably securing the receptacle within the receptacle orifice. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the unit in Lilja combined with Lorenzana to have included the receptacle as taught by Dahlquist for the purpose of providing a means for stabilizing and supporting objects having a diameter that exceeds the diameter of the receptacle orifice.

#### ***Allowable Subject Matter***

Claims 4 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 1-23 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent 2,924,338 to Sharp

U.S. Patent 5,046,699 to Perreault et al.

U.S. Patent D353,742 to Lewis et al.

U.S. Patent 6,675,819 to Arrowood et al.

U.S. Patent 6,732,985 to Cantrell

Sharp discloses a knockdown support for beach articles. Perreault et al. disclose an anchoring device for securing a post into the ground. Lewis et al. disclose a combined food tray and stand. Arrowood et al. disclose a mounting device for a beach umbrella. Cantrell disclose a beach utility pole.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of




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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anita M. King whose telephone number is (703) 308-2162. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie A. Braun can be reached on (703) 308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Anita M. King  
Primary Examiner  
Art Unit 3632

October 26, 2004